

AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2199

Introduced by Assembly Member Campos

February 18, 2016

An act to amend Sections 261.5 and ~~647.64~~ 288 of the Penal Code, relating to sexual offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 2199, as amended, Campos. Sexual offenses against minors: persons in a position of authority.

(1) Existing law provides various circumstances that constitute rape, which are punishable by imprisonment in the state prison for 3, 6, or 8 years, except as specified.

Existing law also prescribes circumstances that constitute unlawful sexual intercourse, some of which involve an adult perpetrator who engages in that unlawful intercourse with a minor, as specified. Unlawful sexual intercourse under those circumstances is punishable by imprisonment for 2, 3, or 4 years, and also may be subject to designated civil penalties or fines. Under existing law, any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to a specified provision of law for 2, 3, or 4 years.

This bill would subject any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age and is convicted of a felony *to* a sentence enhancement of ~~2, 4, or 6~~ 2 years, if the perpetrator holds a position of

authority over the minor with whom he or she engaged in the act of unlawful sexual intercourse. By changing the penalty for the commission of unlawful sexual intercourse under the above circumstances, this bill would impose a state-mandated local program.

~~(2) Existing law makes it a misdemeanor to annoy or molest a child under 18 years of age. Existing law makes it a misdemeanor to engage in conduct with an adult whom the perpetrator believes is a child if that conduct would otherwise violate the above provision if directed toward a child and if the perpetrator is motivated by an unnatural or abnormal sexual interest in children.~~

~~This bill would subject a person who violates those provisions with respect to a minor under 16 years of age over whom the person holds a position of authority to an additional term of imprisonment of 2, 4, or 6 years beyond the otherwise applicable term. By creating a new crime, the bill would impose a state-mandated local program.~~

(2) Under existing law, any person who willfully and lewdly commits a lewd or lascivious act with a minor under 14 years of age with the intent of arousing the minor is guilty of a felony, punishable by imprisonment in the state prison for 3, 6, or 8 years. Existing law makes it a public offense for a person to commit this act with the intent of arousing a minor of 14 or 15 years of age when the person is at least 10 years older than the minor, punishable by imprisonment in the state prison for one, 2, or 3 years, or by imprisonment in a county jail for no more than one year.

This bill would subject any person who willfully and lewdly commits a lewd or lascivious act with a minor under 14 years of age with the intent of arousing the minor, or who commits such an act with the intent of arousing a minor of 14 or 15 years of age when the person is at least 10 years older than the minor, to a sentence enhancement of 2 years, if the perpetrator holds a position of authority over the minor with whom he or she engaged in the act. By changing the penalty for the commission of a lewd or lascivious act under the above circumstances, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 261.5 of the Penal Code is amended to
2 read:

3 261.5. (a) Unlawful sexual intercourse is an act of sexual
4 intercourse accomplished with a person who is not the spouse of
5 the perpetrator, if the person is a minor. For the purposes of this
6 section, a “minor” is a person under ~~the age of~~ 18 years *of age* and
7 an “adult” is a person who is at least 18 years of age.

8 (b) Any person who engages in an act of unlawful sexual
9 intercourse with a minor who is not more than three years older
10 or three years younger than the perpetrator, is guilty of a
11 misdemeanor.

12 (c) Any person who engages in an act of unlawful sexual
13 intercourse with a minor who is more than three years younger
14 than the perpetrator is guilty of either a misdemeanor or a felony,
15 and shall be punished by imprisonment in a county jail not
16 exceeding one year, or by imprisonment pursuant to subdivision
17 (h) of Section 1170.

18 (d) Any person 21 years of age or older who engages in an act
19 of unlawful sexual intercourse with a minor who is under 16 years
20 of age is guilty of either a misdemeanor or a felony, and shall be
21 punished by imprisonment in a county jail not exceeding one year,
22 or by imprisonment pursuant to subdivision (h) of Section 1170
23 for two, three, or four years.

24 (e) Notwithstanding any other provision of this section, a person
25 who is guilty of a felony pursuant to subdivision (d) who holds a
26 position of authority over the minor with whom he or she has
27 engaged in an act of unlawful sexual intercourse, shall be punished
28 by an additional term of imprisonment in a county jail for ~~two,~~
29 ~~four, or six~~ *two* years.

30 (1) For purposes of this subdivision, a person is in a “position
31 of authority” if he or she, by reason of that position, is able to
32 exercise undue influence over a minor. A “position of authority”
33 includes, but is not limited to, a ~~parent,~~ stepparent, foster parent,
34 ~~relative,~~ partner of the ~~parent or relative,~~ *parent*, caretaker, youth
35 leader, recreational director, athletic manager, coach, teacher,
36 counselor, therapist, religious leader, doctor, *employer, or*
37 employee of one of those aforementioned ~~persons, or coworker.~~
38 *persons.*

1 (2) For purposes of this subdivision, “undue influence” has the
2 same meaning as that term is defined in Section 15610.70 of the
3 Welfare and Institutions Code.

4 (f) (1) Notwithstanding any other provision of this section, an
5 adult who engages in an act of sexual intercourse with a minor in
6 violation of this section may be liable for civil penalties in the
7 following amounts:

8 (A) An adult who engages in an act of unlawful sexual
9 intercourse with a minor less than two years younger than the adult
10 is liable for a civil penalty not to exceed two thousand dollars
11 (\$2,000).

12 (B) An adult who engages in an act of unlawful sexual
13 intercourse with a minor at least two years younger than the adult
14 is liable for a civil penalty not to exceed five thousand dollars
15 (\$5,000).

16 (C) An adult who engages in an act of unlawful sexual
17 intercourse with a minor at least three years younger than the adult
18 is liable for a civil penalty not to exceed ten thousand dollars
19 (\$10,000).

20 (D) An adult over the age of 21 years who engages in an act of
21 unlawful sexual intercourse with a minor under 16 years of age is
22 liable for a civil penalty not to exceed twenty-five thousand dollars
23 (\$25,000).

24 (2) The district attorney may bring actions to recover civil
25 penalties pursuant to this subdivision. From the amounts collected
26 for each case, an amount equal to the costs of pursuing the action
27 shall be deposited with the treasurer of the county in which the
28 judgment was entered, and the remainder shall be deposited in the
29 Underage Pregnancy Prevention Fund, which is hereby created in
30 the State Treasury. Amounts deposited in the Underage Pregnancy
31 Prevention Fund may be used only for the purpose of preventing
32 underage pregnancy upon appropriation by the Legislature.

33 (3) In addition to any punishment imposed under this section,
34 the judge may assess a fine not to exceed seventy dollars (\$70)
35 against any person who violates this section with the proceeds of
36 this fine to be used in accordance with Section 1463.23. The court
37 shall, however, take into consideration the defendant’s ability to
38 pay, and no defendant shall be denied probation because of his or
39 her inability to pay the fine permitted under this subdivision.

40 *SEC. 2. Section 288 of the Penal Code is amended to read:*

1 288. (a) Except as provided in subdivision (i), any person who
2 willfully and lewdly commits any lewd or lascivious act, including
3 any of the acts constituting other crimes provided for in Part 1,
4 upon or with the body, or any part or member thereof, of a child
5 who is under the age of 14 years, with the intent of arousing,
6 appealing to, or gratifying the lust, passions, or sexual desires of
7 that person or the child, is guilty of a felony and shall be punished
8 by imprisonment in the state prison for three, six, or eight years.

9 (b) (1) Any person who commits an act described in subdivision
10 (a) by use of force, violence, duress, menace, or fear of immediate
11 and unlawful bodily injury on the victim or another person, is
12 guilty of a felony and shall be punished by imprisonment in the
13 state prison for 5, 8, or 10 years.

14 (2) Any person who is a caretaker and commits an act described
15 in subdivision (a) upon a dependent person by use of force,
16 violence, duress, menace, or fear of immediate and unlawful bodily
17 injury on the victim or another person, with the intent described
18 in subdivision (a), is guilty of a felony and shall be punished by
19 imprisonment in the state prison for 5, 8, or 10 years.

20 (c) (1) Any person who commits an act described in subdivision
21 (a) with the intent described in that subdivision, and the victim is
22 a child of 14 or 15 years, and that person is at least 10 years older
23 than the child, is guilty of a public offense and shall be punished
24 by imprisonment in the state prison for one, two, or three years,
25 or by imprisonment in a county jail for not more than one year. In
26 determining whether the person is at least 10 years older than the
27 child, the difference in age shall be measured from the birth date
28 of the person to the birth date of the child.

29 (2) Any person who is a caretaker and commits an act described
30 in subdivision (a) upon a dependent person, with the intent
31 described in subdivision (a), is guilty of a public offense and shall
32 be punished by imprisonment in the state prison for one, two, or
33 three years, or by imprisonment in a county jail for not more than
34 one year.

35 (3) *Any person who is guilty of a felony pursuant to subdivision*
36 *(a) or is guilty of a public offense pursuant to paragraph (1), and*
37 *who holds a position of authority over the minor with whom he or*
38 *she has engaged in an act of unlawful sexual intercourse, shall be*
39 *punished by an additional term of imprisonment for two years.*

1 (A) For purposes of this paragraph, a person is in a “position
2 of authority” if he or she, by reason of that position, is able to
3 exercise undue influence over a minor. A “position of authority”
4 includes, but is not limited to, a stepparent, foster parent, partner
5 of the parent, youth leader, recreational director, athletic manager,
6 coach, teacher, counselor, therapist, religious leader, doctor,
7 employer, or employee of one of those aforementioned persons.

8 (B) For purposes of this paragraph, “undue influence” has the
9 same meaning as that term is defined in Section 15610.70 of the
10 Welfare and Institutions Code.

11 (d) In any arrest or prosecution under this section or Section
12 288.5, the peace officer, district attorney, and the court shall
13 consider the needs of the child victim or dependent person and
14 shall do whatever is necessary, within existing budgetary resources,
15 and constitutionally permissible to prevent psychological harm to
16 the child victim or to prevent psychological harm to the dependent
17 person victim resulting from participation in the court process.

18 (e) Upon the conviction of any person for a violation of
19 subdivision (a) or (b), the court may, in addition to any other
20 penalty or fine imposed, order the defendant to pay an additional
21 fine not to exceed ten thousand dollars (\$10,000). In setting the
22 amount of the fine, the court shall consider any relevant factors,
23 including, but not limited to, the seriousness and gravity of the
24 offense, the circumstances of its commission, whether the
25 defendant derived any economic gain as a result of the crime, and
26 the extent to which the victim suffered economic losses as a result
27 of the crime. Every fine imposed and collected under this section
28 shall be deposited in the Victim-Witness Assistance Fund to be
29 available for appropriation to fund child sexual exploitation and
30 child sexual abuse victim counseling centers and prevention
31 programs pursuant to Section 13837.

32 If the court orders a fine imposed pursuant to this subdivision,
33 the actual administrative cost of collecting that fine, not to exceed
34 2 percent of the total amount paid, may be paid into the general
35 fund of the county treasury for the use and benefit of the county.

36 (f) For purposes of paragraph (2) of subdivision (b) and
37 paragraph (2) of subdivision (c), the following definitions apply:

38 (1) “Caretaker” means an owner, operator, administrator,
39 employee, independent contractor, agent, or volunteer of any of

- 1 the following public or private facilities when the facilities provide
2 care for elder or dependent persons:
- 3 (A) Twenty-four hour health facilities, as defined in Sections
4 1250, 1250.2, and 1250.3 of the Health and Safety Code.
 - 5 (B) Clinics.
 - 6 (C) Home health agencies.
 - 7 (D) Adult day health care centers.
 - 8 (E) Secondary schools that serve dependent persons and
9 postsecondary educational institutions that serve dependent persons
10 or elders.
 - 11 (F) Sheltered workshops.
 - 12 (G) Camps.
 - 13 (H) Community care facilities, as defined by Section 1402 of
14 the Health and Safety Code, and residential care facilities for the
15 elderly, as defined in Section 1569.2 of the Health and Safety
16 Code.
 - 17 (I) Respite care facilities.
 - 18 (J) Foster homes.
 - 19 (K) Regional centers for persons with developmental disabilities.
 - 20 (L) A home health agency licensed in accordance with Chapter
21 8 (commencing with Section 1725) of Division 2 of the Health
22 and Safety Code.
 - 23 (M) An agency that supplies in-home supportive services.
 - 24 (N) Board and care facilities.
 - 25 (O) Any other protective or public assistance agency that
26 provides health services or social services to elder or dependent
27 persons, including, but not limited to, in-home supportive services,
28 as defined in Section 14005.14 of the Welfare and Institutions
29 Code.
 - 30 (P) Private residences.
- 31 (2) “Board and care facilities” means licensed or unlicensed
32 facilities that provide assistance with one or more of the following
33 activities:
- 34 (A) Bathing.
 - 35 (B) Dressing.
 - 36 (C) Grooming.
 - 37 (D) Medication storage.
 - 38 (E) Medical dispensation.
 - 39 (F) Money management.

1 (3) “Dependent person” means any person who has a physical
 2 or mental impairment that substantially restricts his or her ability
 3 to carry out normal activities or to protect his or her rights,
 4 including, but not limited to, persons who have physical or
 5 developmental disabilities or whose physical or mental abilities
 6 have significantly diminished because of age. “Dependent person”
 7 includes any person who is admitted as an inpatient to a 24-hour
 8 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
 9 the Health and Safety Code.

10 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
 11 subdivision (c) apply to the owners, operators, administrators,
 12 employees, independent contractors, agents, or volunteers working
 13 at these public or private facilities and only to the extent that the
 14 individuals personally commit, conspire, aid, abet, or facilitate any
 15 act prohibited by paragraph (2) of subdivision (b) and paragraph
 16 (2) of subdivision (c).

17 (h) Paragraph (2) of subdivision (b) and paragraph (2) of
 18 subdivision (c) do not apply to a caretaker who is a spouse of, or
 19 who is in an equivalent domestic relationship with, the dependent
 20 person under care.

21 (i) (1) Any person convicted of a violation of subdivision (a)
 22 shall be imprisoned in the state prison for life with the possibility
 23 of parole if the defendant personally inflicted bodily harm upon
 24 the victim.

25 (2) The penalty provided in this subdivision shall only apply if
 26 the fact that the defendant personally inflicted bodily harm upon
 27 the victim is pled and proved.

28 (3) As used in this subdivision, “bodily harm” means any
 29 substantial physical injury resulting from the use of force that is
 30 more than the force necessary to commit the offense.

31 ~~SEC. 2.—Section 647.6 of the Penal Code is amended to read:~~
 32 ~~647.6. (a) (1) Every person who annoys or molests any child~~
 33 ~~under 18 years of age shall be punished by a fine not exceeding~~
 34 ~~five thousand dollars (\$5,000), by imprisonment in a county jail~~
 35 ~~not exceeding one year, or by both the fine and imprisonment.~~
 36 ~~(2) Every person who, motivated by an unnatural or abnormal~~
 37 ~~sexual interest in children, engages in conduct with an adult whom~~
 38 ~~he or she believes to be a child under 18 years of age, which~~
 39 ~~conduct, if directed toward a child under 18 years of age, would~~
 40 ~~be a violation of this section, shall be punished by a fine not~~

1 ~~exceeding five thousand dollars (\$5,000), by imprisonment in a~~
2 ~~county jail for up to one year, or by both that fine and~~
3 ~~imprisonment.~~

4 (b) ~~Every person who violates this section after having entered,~~
5 ~~without consent, an inhabited dwelling house, or trailer coach as~~
6 ~~defined in Section 635 of the Vehicle Code, or the inhabited portion~~
7 ~~of any other building, shall be punished by imprisonment in the~~
8 ~~state prison, or in a county jail not exceeding one year, and by a~~
9 ~~fine not exceeding five thousand dollars (\$5,000).~~

10 (e) (1) ~~Every person who violates this section shall be punished~~
11 ~~upon the second and each subsequent conviction by imprisonment~~
12 ~~in the state prison.~~

13 (2) ~~Every person who violates this section after a previous felony~~
14 ~~conviction under Section 261, 264.1, 269, 285, 286, 288a, 288.5,~~
15 ~~or 289, any of which involved a minor under 16 years of age, or~~
16 ~~a previous felony conviction under this section, a conviction under~~
17 ~~Section 288, or a felony conviction under Section 311.4 involving~~
18 ~~a minor under 14 years of age shall be punished by imprisonment~~
19 ~~in the state prison for two, four, or six years.~~

20 (d) ~~A person who violates this section with respect to a minor~~
21 ~~under 16 years of age over whom the person holds a position of~~
22 ~~authority shall be punished by an additional term of imprisonment~~
23 ~~for two, four, or six years beyond any term otherwise applicable~~
24 ~~under this Section.~~

25 (1) ~~For purposes of this subdivision, a person is in a “position~~
26 ~~of authority” if he or she, by reason of that position, is able to~~
27 ~~exercise undue influence over a minor. A “position of authority”~~
28 ~~includes, but is not limited to, a parent, stepparent, foster parent,~~
29 ~~relative, partner of the parent or relative, caretaker, youth leader,~~
30 ~~recreational director, athletic manager, coach, teacher, counselor,~~
31 ~~therapist, religious leader, doctor, employee of one of those~~
32 ~~mentioned persons, or coworker.~~

33 (2) ~~For purposes of this subdivision, “undue influence” has the~~
34 ~~same meaning as that term is defined in Section 15610.70 of the~~
35 ~~Welfare and Institutions Code.~~

36 (e) (1) ~~In any case in which a person is convicted of violating~~
37 ~~this section and probation is granted, the court shall require~~
38 ~~counseling as a condition of probation, unless the court makes a~~
39 ~~written statement in the court record, that counseling would be~~
40 ~~inappropriate or ineffective.~~

1 ~~(2) In any case in which a person is convicted of violating this~~
2 ~~section, and as a condition of probation, the court prohibits the~~
3 ~~defendant from having contact with the victim, the court order~~
4 ~~prohibiting contact shall not be modified except upon the request~~
5 ~~of the victim and a finding by the court that the modification is in~~
6 ~~the best interest of the victim. As used in this paragraph, “contact~~
7 ~~with the victim” includes all physical contact, being in the presence~~
8 ~~of the victim, communication by any means, any communication~~
9 ~~by a third party acting on behalf of the defendant, and any gifts.~~

10 ~~(f) This section does not prohibit prosecution under any other~~
11 ~~provision of law.~~

12 SEC. 3. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.